IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5536 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL DASHRATBHAI SOMABHA

Versus

STATE OF GUJARAT

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Appearance:

MR NAVIN K PAHWA for Petitioners

MR KP RAVAL, APP for Respondent No. 1

MR NC NAYAK for Respondent No. 2

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/07/2000

C.A.V. JUDGEMENT

Rule. Mr.K.P.Raval, learned Addl. Public Prosecutor and Mr.N.C.Nayak, learned advocate waive

service of notice of Rule on behalf of respondent Nos.1 and 2 respectively.

2. Present petitioners are the original accused Nos.1 and 2 of Criminal Complaint No.156 of 1998 which has been filed by the present respondent No.2-Girishkumar Visabhai Patel as complainant before the learned Judicial Magistrate (First Class), Kalol, Dist.Mehsana on 14-12-1998 against the present petitioners-original accused Nos.1 and 2 and two other original accused under Secs.166, 193, 196, 406 of Indian Penal Code and alternatively 420, 496, 465, 467, 468, 471 and 34 of Indian Penal Code.

3. It was alleged in the said complaint that present petitioners and others had committed the offence of criminal breach of trust and cheating. After recording the verification of the complaint, learned Judicial Magistrate (First Class), Kalol, ordered for investigation by Police under Sec.156(3) of the Code of Criminal Procedure and sent it to the concerned Police Station wherein this complaint was treated as M.Case No.4 of 1998 and Police started investigation. The Investigating Officer, at the end of investigation, submitted `C' summary report in the Court of Judicial Magistrate (First Class), Kalol, on 27-11-1998. Thereafter, an order was passed on the said report by the learned Magistrate on 6-2-1998 directing for further investigation by Dy.S.P. under Sec.173(8) of Cr.P.C. and to submit the report on or before 12-4-1999. The Dy.S.P. after further investigation submitted the `C' summary report on 11-4-1999 before the Judicial Magistrate (First Class), Kalol. At the time of hearing, the complainant raised an objection that investigation was not properly carried out and, therefore, learned Magistrate by an order dated 19-8-1999 directed for further investigation to be carried out by Police Inspector, L.C.B., Mehsana and to submit the report on or before 30th of September, 1999. Being aggrieved and dissatisfied by the said order and also on other grounds, present petitioners have filed by the present petition under Sec.482 of Cr.P.C. for quashing the criminal complaint lying before the Court of Judicial Magistrate (First Class), Kalol.

4. I have heard Mr.P.M.Thakkar, learned Senior Counsel with Mr.N.K.Pahva, learned advocate for the petitioner, Mr.K.P.Raval, learned APP for the respondent No.1-State and Mr.N.C.Nayak, learned advocate for the respondent No.2.

5. Learned counsel for the petitioner has mainly submitted that the present petitioners-original accused Nos.1 and 2, other co-accused and complainant had formed a partnership firm on 18-1-1984 known as R.Builders and it was doing the business of making electric pole and a Partnership Deed was also executed on the same day. A bank account was also opened in a nationalised bank which was to be operated by the partners as agreed in the Partnership Deed. According to him, there was some business dispute in the partnership and, therefore, present respondent No.2-original complainant filed a suit being Special Civil Suit No.141 of 1988 in the Court of learned Civil Judge (S.D.) at Mehsana against the firm and its partners on 10-5-1988 for dissolution of the partnership firm and accounts thereof praying for a decree of Rs.1,74,522/- as his share in the partnership firm. It was argued that along with the suit, respondent No.2 also filed application Ex.5 praying for certain interim relief, which was not granted by the Court and the same is pending before the learned Civil Judge (S.D.), Mehsana.

6. It was further argued that present complainant had also filed one criminal complaint against the present petitioners similar to the one arising out of dispute of business transaction in the Court of learned Judicial Magistrate (First Class), Kalol on 19-4-1993 under Secs.406, 409, 468, 471, 477-A, 34, 120-B of Indian Penal Code in which also, order was passed by the learned Magistrate to investigate the same and submit the report on or before 20th May, 1993. Present petitioners have challenged the impugned complaint before this Court by filing Cri. Misc. Appln. No.3919 of 1995 wherein this Court (Coram: D.G.Karia, J.) issued notice and also granted interim relief. Thereafter, vide order dated 4-12-1995, matter was admitted and investigation was stayed by the Court. It was further argued by the learned counsel for the petitioners that even though the present complainant had filed the above numbered complaint before the learned Judicial Magistrate (First Class) Class in the year 1993, he has filed another complaint in the year 1998 in the Court of learned Judicial Magistrate (First Class), Kalol on 14-5-1998 which has been registered as Criminal Case No.168 of 1998 in connection with the same alleged offence. Showing copy of the said complaint vide Annexure-A, learned counsel for the petitioner has argued that the material fact of filing the Special Civil Suit No.141 of 1988 and also of criminal complaint in the year 1993 in relation to the same offence by the present complainant has not been mentioned in the present complainant and, according

to him, it is a case of misuse of the process of law by lodging criminal prosecutions against the present petitioners for the purpose of achieving ulterior motives. He has vehemently argued that it is a fit case wherein discretionary power under Sec.482 of Cr.P.C. is required to be used and complaint is required to be quashed.

7. Learned advocate for the respondent No.2-complainant is not in a position to deny the factual aspect of having filed Special Civil Suit No.141 of 1988 by the present respondent No.2 in the Court of learned Judicial Magistrate (First Class) on 10-5-1988 and having not obtained interim relief in their favour and that above civil suit is still pending and awaiting for final disposal. He is also not in a position to deny the fact that complainant of that case and present complainant had filed the criminal complaint directly before the Court of learned Judicial Magistrate (First Class) against the present petitioners on 19-4-1993 for the same offence and same has been challenged under Sec.482 of Cr.P.C. in this Court in which further investigation has been stayed by the Court. Further he is not in a position to deny the fact that though the above complaint has been stayed by this Court, present complainant-original complainant has filed the present Criminal Case No.156 of 1998 before the learned Judicial Magistrate (First Class) on 14-5-1998 for the same alleged offence.

8. In view of the above factual aspects of the matter, I am of the opinion that the impugned complaint has been filed by the respondent No.2 by misusing the process of law by suppressing the material fact of having filed the civil suit and the complaint in the year 1993 wherein investigation has been stayed by this Court in 1995. So, it is nothing but a glaring example of abuse of the process of law. It appears that Court below had issued the process under Sec.156(3) of Cr.P.C. and Investigating Officer has submitted `C' summary report and same has not been accepted by the Court as it was objected by the otherside and Dy.S.P., Kalol was directed to investigate further into the matter under Sec.173(8) of Cr.P.C. and to submit the report within the stipulated time. It is seen that the Dy.S.P. has also submitted the `C' summary report after further investigating into the matter. Since the objection was raised by the complainant, Court below has directed for investigation by P.I., L.C.B., Mehsana under Sec.173(8) of Cr.P.C. It is not proper on the part of the learned Judicial Magistrate (First Class) to order for further investigation under Sec.173(8) of Cr.P.C. by Dy.S.P.

and later on directing the subordinate officer to further investigate into the matter. If at all he is dissatisfied with the report submitted by the Dy.S.P. he could have ordered for further investigation by a superior officer not below the rank of a Dy.S.P. If he would have gone through the detailed `C' summary reports submitted by two officers, then he would not have directed for further investigation. Learned Judicial Magistrate (First Class) ought to have applied his mind before passing such an order. Over and above, when the civil suit has been filed by the present respondent No.2-original complainant in the year 1988 for the dissolution of partnership firm and its accounts, it should have been presumed that civil dispute between the parties are going on and he has tried to convert this civil dispute into criminal one and it is nothing but abuse of the process of law.

9. It can safely be understood that since the present respondent No.2-original complainant was not satisfied with the civil suit filed in the year 1988 and also the criminal complaint filed in the year 1993, he has again filed another criminal complaint in the year 1998 for the same alleged offence and, therefore, this type of practice is required to be deprecated for which no support of any judgment is required. Even then, reliance can be placed on a judgment of 1996(2) G.L.H. (U.J.) page 33 wherein this Court has held as under:

> "It is obvious that the real dispute between the parties is a civil dispute and the original complainant has tried to make abuse of process of law by lodging criminal prosecution against the petitioner which is not tenable in the eye of law."

10. In view of the above facts and circumstances of the case, I am of the view that it is a glaring example of misuse of the process of law and, therefore, present complaint is required to be quashed.

11. Under the circumstances, present petition is allowed. The impugned complaint being Criminal Complaint No.156 of 1998 pending in the Court of learned Judicial Magistrate (First Class), Kalol as M.Case No.4 of 1998 is hereby quashed. Rule is made absolutely accordingly.

(R.P.DHOLAKIA,J.)
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